

Senate Bill 115

By: Senators Butler of the 55th, Williams of the 19th, Miles of the 43rd, Weber of the 40th, Jones of the 10th and others

AS PASSED

AN ACT

To amend an Act known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, so as to establish an operating budget reserve; to implement an independent management audit; to implement an annual report on the status of pensions; to implement an annual report of expenses; to revise the provisions regarding collective bargaining agreements; to provide for binding arbitration of disputes; to extend the sunset of certain provisions relating to use of proceeds of a sales and use tax for the Authority; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

An Act known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, is amended by adding new subsections (d) through (g) at the end of Section 17 to read as follows:

"(d) The Authority shall fund and maintain an operating budget reserve of ten percent (10%) of the Authority's prior year operating budget revenues. For purposes of this section, the term 'operating budget revenues' shall mean all funds received from federal, state, or local sources, including but not limited to grants, distributions from federal and state formula funds, or direct federal and state appropriations for projects or programs of the Authority, as well as farebox revenues and revenues received from rentals on property owned or operated by the Authority. Said operating budget reserve shall be utilized for ongoing operating expenses only in those circumstances requiring its use due to worsened economic conditions in the Atlanta region, or catastrophic loss such as an act of God or terrorism, which conditions cause a temporary shortfall in the Authority's anticipated revenues. The temporary operating revenue shortfall so noted shall be for a period of not less than six consecutive months during which total anticipated revenues are not less than two and one-half percent (2.5%) below the revenues received during the preceding fiscal

year for the same six-month period. The first three percent (3%) of the reserve shall not be used in any six-month period. The purpose of said reserve shall be exclusively to pay the ongoing operating expenses during times of economic downturn and shall not be considered to be an available recurring revenue for operating budget purposes and under no circumstances shall the operating budget reserve be used to permanently replace the revenues which are reduced due to the economic conditions set forth above. Upon cessation of such economic downturn, as evidenced by cessation of the revenue shortfall required for the use of the reserve for Authority operating expenses, the operating budget reserve shall be replenished.

(e) The Authority shall cause to be performed an independent annual management audit on the condition of management of the Authority at the expense of the Authority, to be supervised and approved by the Metropolitan Atlanta Rapid Transit Overview Committee, and which management audit shall be submitted to the Board of the Authority, the Governor, the State Auditor, and the Metropolitan Atlanta Rapid Transit Overview Committee before December 31 of each year.

(f) The Authority shall report to the recipients of the Metropolitan Atlanta Rapid Transit Authority represented and nonrepresented pension plans on an annual basis the status of the Metropolitan Atlanta Rapid Transit Authority pension systems. Said report shall include, at a minimum, the investments made on behalf of recipients of pension benefits under the systems, by investment, the unfunded liabilities of said systems, and present and future budgetary obligations necessitated by benefit commitments made by the Authority. Said report shall be given to each recipient of Metropolitan Atlanta Rapid Transit Authority pensions under the pension systems of the Authority, the Metropolitan Atlanta Rapid Transit Overview Committee, and the Governor.

(g) The Authority shall submit to the Metropolitan Atlanta Rapid Transit Overview Committee, the presiding officers of the House and Senate, and the Governor an annual report which report shall indicate consultant expenses, other professional services, salaries and expenses of full-time and part-time employees and Board members, and payments rendered by outside companies or agencies to the Authority for any and all services. Said report shall be submitted by August 31 of each year. In addition to a printed copy to be provided to the parties enumerated in this subsection, said report shall be posted in a prominent location on the Authority's website within two weeks of submittal of the report to the parties enumerated in this subsection. The report posted on the Authority's website shall show employee identification numbers and job titles instead of the names of the

employees. The employee's social security number shall not be used as the employee's identification number."

SECTION 2.

Said Act is further amended by striking Section 20 in its entirety and inserting in lieu thereof a new Section 20 to read as follows:

"SECTION 20.

Rules and Regulations; Miscellaneous.

(a) The Board may promulgate reasonable rules and regulations, not inconsistent with law, for the control and management of its operations, properties, employees and patrons.

(b)(1) The Board may provide for the recognition of authorized representatives of the employees of the Authority and for collective bargaining, in accordance with this subsection, with such authorized representatives.

(2) As used in this subsection, the following terms shall have the following meanings:

(A) 'Authorized representative' means the collective bargaining agent for a class of employees, recognized for such purposes by the Board.

(B) 'Collective bargaining' or 'collectively bargain' means performing the mutual obligation of the Authority and the authorized representatives of represented employees to negotiate, in good faith and to impasse, if necessary, over wages, hours, and other terms and conditions of employment with the bona fide intention of reaching a negotiated agreement.

(C) 'Grievance arbitration' means arbitration of a dispute between the Authority and the authorized representative, acting on behalf of a represented employee, which involves the interpretation of an existing labor agreement and the application of the terms and conditions of that labor agreement to the claims of one or more employees.

(D) 'Labor agreement' means an agreement, including any agreement respecting pension or retirement benefits for represented employees, between the Authority and the authorized representative, entered into in accordance with this subsection, which establishes the wages, hours, and other terms and condition of employment for represented employees of the Authority.

(E) 'Represented employee' means an employee of the Authority who is a member of a class of employees for which the Board has recognized an authorized representative.

(3) Every labor agreement entered into by the Authority shall provide for grievance arbitration and shall specify the procedure therefor. In any grievance arbitration, the arbitrators must base their decision upon the express terms and conditions of an existing labor agreement.

(4) Upon or prior to the expiration of an existing labor agreement, the Authority and the authorized representative shall collectively bargain in an effort to reach a successor or replacement labor agreement. If, after expiration of an existing labor agreement, the Authority and the authorized representative are then unable to agree upon the terms and conditions of a new labor agreement, including but not limited to the issue of wages, they shall jointly select or, failing their agreement, upon the written petition of either or both parties, the Governor shall appoint within 30 days after the receipt of said petition a neutral fact finder to investigate and explore all unresolved collective bargaining issues and to render a report to the Authority, the authorized representative, and the public. The neutral fact finder shall conduct such hearings as may be necessary to provide for the full and fair presentation of all unresolved collective bargaining issues by both parties. That fact finder shall be authorized to sign and issue subpoenas for witnesses or documents, to administer oaths, to take oral or written testimony and to take such other actions as may be needed to make comprehensive findings of fact and recommendations. When a subpoena is disobeyed, any party may apply to the Superior Court of Fulton County for an order requiring obedience. Failure to comply with that order shall be cause for punishment as for contempt of court. The costs of securing the attendance of witnesses, including fees and mileage, shall be computed in the same manner as prescribed by law in civil cases in the superior court.

(5) The fact finder's report shall recommend as to all unresolved collective bargaining issues, including appropriate wages, hours and other terms and conditions of employment for represented employees, and shall set forth supporting factual findings, determined after due consideration of the factors set forth in subparagraphs (A) through (E) of paragraph (8) of this subsection, and shall contain a summary of the findings. The report of the fact finder shall be issued within 30 days after the fact finder is selected or appointed. Upon issuance, the report shall be distributed by the Authority to the Governor, the Metropolitan Atlanta Rapid Transit Overview Committee of the Georgia General Assembly, and each local governing body in the metropolitan area. The fact finder shall cause the summary of findings to be published once in the newspaper having the largest circulation in the metropolitan area. The fact finder shall be compensated in

the same manner as a special master pursuant to Code Section 22-2-106 of the O.C.G.A., and the costs thereof and any other costs of the proceeding shall be borne equally by the parties. After selection or appointment of a fact finder pursuant to this paragraph, the parties may continue to collectively bargain on any issues.

(6) Upon issuance of the fact finder's report, the Authority and the authorized representative shall continue to collectively bargain in light of the recommendations set forth in such report. If either party rejects any or all of the fact finder's recommendations and the parties are otherwise unable, through collective bargaining, to reach agreement on such issue or issues, then each party rejecting any of the fact finder's recommendations shall prepare a written statement setting forth the specific recommendations which such party has rejected, the party's counterproposal on the issue or issues, and the reasons for rejecting the fact finder's recommendations. Prior to commencement of any proceeding for interest arbitration, as provided in paragraph (7) of this subsection, each party required under this paragraph to prepare that statement shall cause it to be published in the local newspaper having the largest circulation in the metropolitan area and shall concurrently distribute that statement to the Governor, the Metropolitan Atlanta Rapid Transit Overview Committee of the Georgia General Assembly, and each local governing body in the metropolitan area.

(7) If, within the 30 days following issuance of the fact finder's report, the Authority and the authorized representative are unable to conclude a new labor agreement, either party may then seek binding interest arbitration of all unresolved issues between the parties. Such an action may be instituted by the filing of a petition with the Governor for binding interest arbitration and for the appointment of an arbitrator. The Governor shall appoint an arbitrator who is a member of the National Academy of Arbitrators or is approved by the American Arbitration Association within 30 days of the petition. That arbitrator shall decide the issues within 90 days after said petition shall be filed with the Governor. That arbitrator's decision on those issues shall bind both the Authority and the authorized representative. That arbitrator may require the Authority and the authorized representative to provide that arbitrator with such information as the arbitrator determines to be necessary in resolving the issues.

(8) In any interest arbitration under this subsection, the arbitrator shall be bound by any written stipulation or submission agreement between the Authority and the authorized representative concerning such determination. In determining any issue, the arbitrator

shall also give weight both to the report of the neutral fact finder and to the following factors:

- (A) The financial ability of the Authority to pay wages and provide benefits, whether or not increased, while adhering to all legal requirements governing the Authority's expenditure of public funds and revenues and maintaining levels of transit service sufficient to serve the metropolitan area;
 - (B) The amount, if any, of any fare increase which would be necessary to afford a wage or salary increase or improvement in fringe benefits or extension of vacation, holiday, or excused time and the ability of the public to bear a fare increase, with consideration of the per capita income of those persons in the service area;
 - (C) A comparison between the overall wage and salary levels and fringe benefit levels and vacation, holiday and excused time allowances of the Authority's represented employees and other workers in the public and private sectors of the metropolitan area who perform work requiring similar skills in other major ground transportation services;
 - (D) A comparison of the hours and working conditions of the Authority's represented employees and other workers in the public and private sectors of the metropolitan area who perform work requiring similar skills in other major ground transportation services; and
 - (E) The cost of consumer goods and services within the metropolitan area.
- (9) In the event that either party wishes to enforce the decision of the arbitrator, a petition for such enforcement must be filed within ninety (90) days of such decision. In odd numbered years, the petition must be filed in the Superior Court of Fulton County and directed to the senior judge in time of service in that court. In even numbered years, the petition must be filed in the Superior Court of DeKalb County and directed to the senior judge in time of service in that court. The court shall confirm the decision unless the decision is vacated by the court because the court finds that the rights of a party were prejudiced by:
- (A) Corruption, fraud, or misconduct in procuring the decision;
 - (B) Partiality of an arbitrator appointed as a neutral;
 - (C) An overstepping by the arbitrators of their authority or such imperfect execution of it that a final and definite decision upon the subject of such matter submitted was not made; or
 - (D) The arbitrator's manifest disregard for the law.

The judge's ruling in this enforcement proceeding shall bind the Authority and the authorized representative and there shall be no appeal from this decision.

(10) Upon vacating a decision, the court may order a rehearing and determination of all or any of the issues either before the same arbitrator or before a new arbitrator appointed as provided by this part. In any provision of an agreement limiting the time for a hearing or decision, time shall be measured from the date of such order or rehearing, whichever is appropriate, or a time may be specified by the court.

(11) No employee of the Authority shall engage in any strike, sit-down, slow-down, walkout, or other concerted cessation or curtailment of work, and no authorized representative of employees of the Authority shall cause, instigate, encourage, promote or condone any strike, sit-down, slow-down, walkout, or other concerted cessation or curtailment of work by any employee of the Authority. The Authority shall not unilaterally increase, decrease, or otherwise change the wages or fringe benefits of represented employees as of the last day of an expired contract pending the establishment of new wages and fringe benefits by negotiation or interest arbitration.

(12) Subject to any requirement imposed pursuant to Section 13 (c) of the Urban Mass Transportation Act of 1964, as amended, the Authority at all times shall have the right to determine the method, means, and personnel by which its operations are to be carried on, including the right to hire part-time employees.

(c) All provisions of general law applicable to the records and documents of counties and municipalities and public access thereto shall be fully applicable to the records and documents of the Authority. The Board shall make reasonable rules and regulations concerning access to its records and documents and may charge reasonable fees for copies or certifications thereof.

(d) As to copies of financial reports and documents under Section 16, budget reports and documents under Section 17, engineering reports and documents under Section 18, and proposed rapid transit contracts under Section 24, the Board may provide for the printing and distribution of a reasonable supply thereof to the public and may, in its discretion, require payment of a reasonable charge therefor."

SECTION 3.

Said Act is further amended by striking subsection (i) of Section 25 and inserting in its place the following:

"(i) Use of Proceeds. The proceeds of the tax levied pursuant to this Act shall be used solely by each local government to fulfill the obligations incurred in the contracts entered into with the Metropolitan Atlanta Rapid Transit Authority as contemplated in the Metropolitan Atlanta Rapid Transit Authority Act of 1965, as amended; provided, however, that no more than fifty percent (50%) of the annual proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection, until January 1, 2002. For the period beginning January 1, 2002, and ending June 30, 2002; and for each fiscal year commencing thereafter until December 31, 2008, no more than fifty-five percent (55%) of the proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection; and for the period beginning January 1, 2009, and ending June 30, 2009, and each fiscal year commencing thereafter until July 1, 2032, no more than fifty percent (50%) of the proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection; except that if the Board of the Metropolitan Atlanta Rapid Transit Authority shall fail to file with the Metropolitan Atlanta Rapid Transit Overview Committee annually, the original and 14 copies of a report of the findings of a completed management performance audit of the Authority's current operations, which audit was performed under contract with and at the expense of the Authority, along with any auditor's recommendations based thereon and the auditor's signed written verification that the Metropolitan Atlanta Rapid Transit Authority fully cooperated with such audit and allowed access to all its books, records, and documents to the extent the auditor deemed necessary, then for the period beginning January 1, 2003, and ending June 30, 2003, and each fiscal year commencing thereafter until July 1, 2032, no more than fifty percent (50%) of the proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection. For each fiscal year commencing on or after July 1, 2032, no more than sixty percent (60%) of the annual proceeds of the tax shall be used to subsidize the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection; and commencing with July 1, 2032, and for every year thereafter, the proceeds of the tax shall not be used to subsidize operations of the transportation system to an extent greater than fifty percent (50%) of the operating costs of the system, exclusive of depreciation, amortization, and other costs and charges as provided in this subsection. In adopting its

annual budget, the Board of the Metropolitan Atlanta Rapid Transit Authority shall be authorized to rely upon estimates of all revenues, operating costs, patronage, and other factors which may affect the amount of the fare required to limit the operating subsidy herein provided for. If the results of any year's operations reflect that the proceeds of the tax were used to subsidize operations to an extent greater than herein provided, the Board shall adjust fares in order to make up the deficit in operations during a period of not to exceed three (3) succeeding years. If the results of operations in the Authority's fiscal year commencing July 1, 1980, or in any subsequent fiscal year reflect that the proceeds of the tax were not used to subsidize operations to the maximum extent herein provided, the Board shall reserve any amounts that could have been used to subsidize operations in that fiscal year and later use said reserved amounts and any interest earned on said reserved amounts to provide an additional subsidy for operations in any future fiscal year or years. The words 'operating costs of the system' for purposes of this subsection 25(i) are defined to include all of the costs of that division of the Authority directly involved and that portion of the nonoperating administrative costs of those divisions of the Authority indirectly involved, through the provision of support services, in providing mass transportation services for the metropolitan area, but exclusive of the costs of the division or divisions directly involved and that portion of the nonoperating administrative costs of those divisions indirectly involved, in the planning, design, acquisition, construction, and improvement of the rapid transit system, according to accepted principles of accounting, and also exclusive of the following costs:

- (1) Nonrecurring costs and charges incurred in order to comply with any statute or regulation concerning either the protection or cleaning up of the environment, or accessibility by handicapped or disabled persons, or occupational health or safety, or compliance with any national or state emergencies, or with any judgment, decree, or order of any court or regulatory agency in implementation of any such statute or regulation; and
- (2) In the case of leases of equipment or facilities that, according to generally accepted principles of accounting, would not be classified as capital leases, payments of rent, and other payments for the property subject to such leases or for the use thereof; provided that any costs for regular maintenance or repair of such equipment or facilities shall not be excluded.

If any proceeds of the tax levied pursuant to this Act are held for the purpose of planning, designing, acquiring, or constructing additional facilities or equipment for or improvements to the rapid transit system and are invested, then all interest earned from such investments

shall be used only for such purposes or for paying the principal of or interest on bonds or certificates issued for such purposes. Commencing July 1, 1988, and until June 30, 2008, and only if expressly authorized by the board, interest earned on reserve funds set aside for rebuilding, repairing, or renovating facilities of the rapid transit system; for replacing, repairing, or renovating equipment or other capital assets thereof; or from the sale or other disposition of real property, may, without regard to the original source of the funds so reserved, be used to pay the operating costs of the system as such costs are defined in this subsection."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.